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COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

ADMINISTRATIVE INVESTIGATIVE SUMMARY

DATE / TIME: August 24, 2011 / 2234 hours

LOCATION: [redacted]
[redacted] South Normandie Avenue
Torrance, California 90502

IAB #: **IV2308834**

SUBJECTS: Nicoles, James [redacted]
Deputy Sheriff Generalist
Carson Station/FORII

Love, Brandon [redacted]
Deputy Sheriff Generalist
Carson Station/FORII

ALLEGATION

It is alleged that Subject Nicoles and Subject Love submitted an arrest report that contained false and/or inaccurate information and that Subject Nicoles provided false testimony at the preliminary hearing for the person whom they arrested ([redacted]).

INCIDENT SYNOPSIS

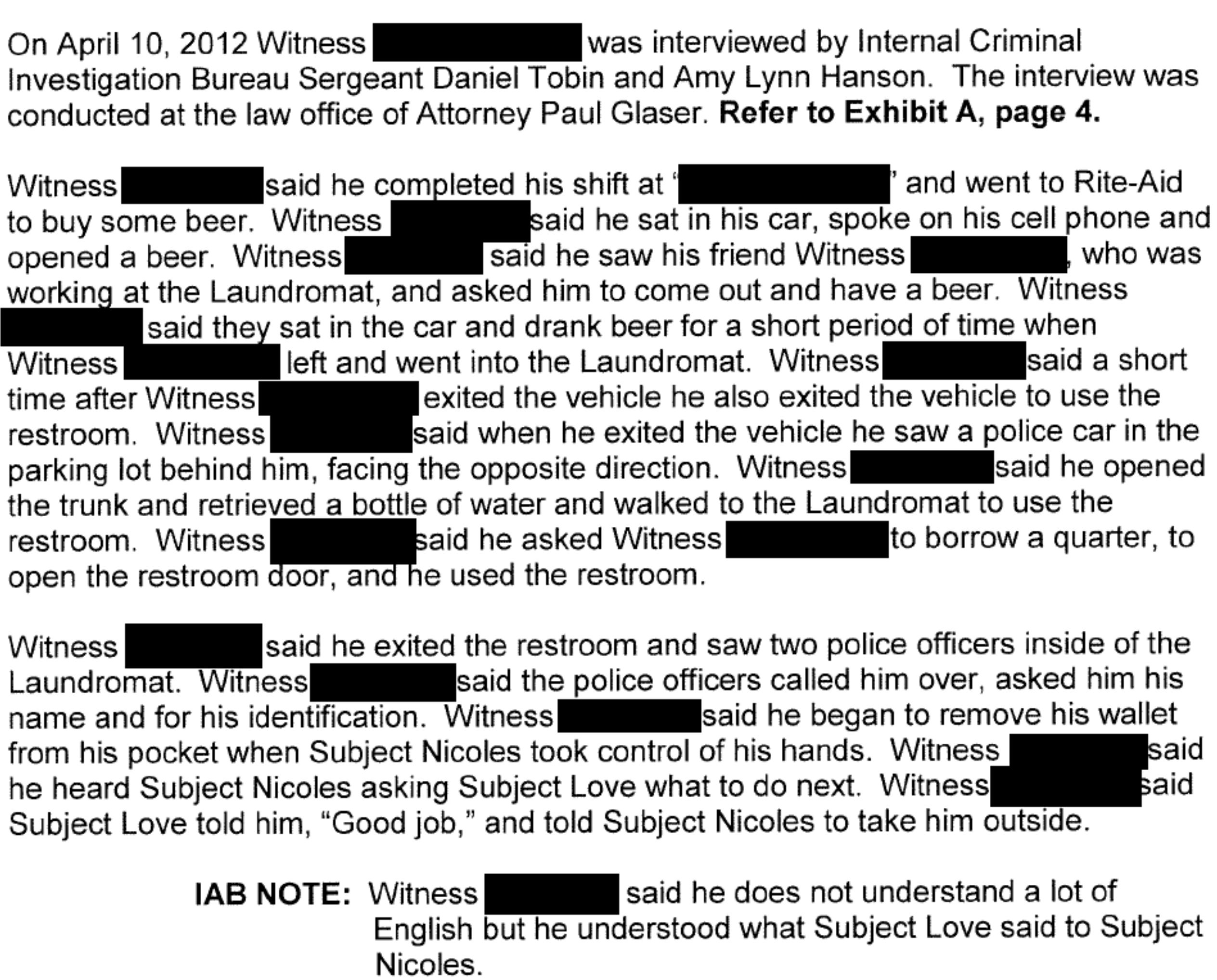
On August 24, 2011, Subject Love and Subject Nicoles arrested [redacted] for drinking in public and drug possession. Subject Nicoles wrote the arrest report. On August 26, 2011, a felony complaint was filed against [redacted] for possession of cocaine. On January 10, 2012, in Los Angeles Superior Court Subject Nicoles testified consistent with the facts as documented in the report, and that the report was true and accurate. [redacted] was held to answer. On February 8, 2012, [redacted] defense attorney notified the District Attorney's Office regarding the existence of a video that he said contradicted the report and testimony. As a result, Subject Nicoles and Subject

Love became the subject of a criminal investigation for False Statements in a Crime Report and Perjury (Nicoles only), which was submitted to the Los Angeles County District Attorney's Office. On February 22, 2013, the District Attorney's Office declined to file charges.

This is a summary based on statements given during audio recorded interviews by the Deputy and witnesses. For complete and detailed statements refer to the digital audio recorded files and the verbatim transcripts, which are included in this investigation.

WITNESS INTERVIEWS

<u>WITNESS [redacted]</u>



On April 10, 2012 Witness [redacted] was interviewed by Internal Criminal Investigation Bureau Sergeant Daniel Tobin and Amy Lynn Hanson. The interview was conducted at the law office of Attorney Paul Glaser. **Refer to Exhibit A, page 4.**

Witness [redacted] said he completed his shift at "[redacted]" and went to Rite-Aid to buy some beer. Witness [redacted] said he sat in his car, spoke on his cell phone and opened a beer. Witness [redacted] said he saw his friend Witness [redacted], who was working at the Laundromat, and asked him to come out and have a beer. Witness [redacted] said they sat in the car and drank beer for a short period of time when Witness [redacted] left and went into the Laundromat. Witness [redacted] said a short time after Witness [redacted] exited the vehicle he also exited the vehicle to use the restroom. Witness [redacted] said when he exited the vehicle he saw a police car in the parking lot behind him, facing the opposite direction. Witness [redacted] said he opened the trunk and retrieved a bottle of water and walked to the Laundromat to use the restroom. Witness [redacted] said he asked Witness [redacted] to borrow a quarter, to open the restroom door, and he used the restroom.

Witness [redacted] said he exited the restroom and saw two police officers inside of the Laundromat. Witness [redacted] said the police officers called him over, asked him his name and for his identification. Witness [redacted] said he began to remove his wallet from his pocket when Subject Nicoles took control of his hands. Witness [redacted] said he heard Subject Nicoles asking Subject Love what to do next. Witness [redacted] said Subject Love told him, "Good job," and told Subject Nicoles to take him outside.

> **IAB NOTE:** Witness [redacted] said he does not understand a lot of English but he understood what Subject Love said to Subject Nicoles.

Witness [redacted] said when they were outside he was instructed to place his hands on the hood of the police car. Witness [redacted] said he was searched, arrested and placed in the back seat of the police car. Witness [redacted] said while he was seated in the police car the deputies went into his car and retrieved the beer can that he was drinking from. Witness [redacted] said he saw the deputies talking amongst themselves but he could not understand what they were saying.

Sergeant Tobin asked Witness [redacted] if the deputies had him exit the vehicle prior to his arrest. Witness [redacted] said the police never took him out of the vehicle.

On August 19, 2013 Witness [redacted] was interviewed by Internal Affairs Bureau Sergeant David Ladjevic and Sergeant Romeo Ingreso. The interview was conducted at Carson Sheriff Station and was digitally audio recorded. The interview was conducted in English and interpreted into Spanish by Witness [redacted] wife [redacted].

Witness [redacted] said he was sitting in his car at the location for approximately five minutes when he saw the police car parked with the lights off. Witness [redacted] said he exited his vehicle and entered the Laundromat to use the restroom. Witness [redacted] said when he exited the restroom he was contacted by the deputies. Witness [redacted] said while at the front of the police car he heard the deputies talking amongst themselves but he did not understand what they were saying. Witness [redacted] said the deputies talked to each other while they were driving and he believed one of the deputies was the "boss." Witness [redacted] was asked which deputy he believed was the "boss." Witness [redacted] said, "The African-American," (Subject Love). Witness [redacted] said he understood what the deputies said on one occasion. Witness [redacted] said he heard one of the deputies say, "It wasn't going to be your night." Witness [redacted] said this was the only thing he understood when the deputies were talking.

WITNESS [redacted]

On June 5, 2012 at 1527 hours, Witness [redacted] was interviewed by Internal Criminal Investigations Bureau Sergeant Daniel Tobin and Sergeant Amy Lynn Hanson. The interview was summarized by Sergeant Hanson and is included in **Exhibit A, pages 5- 6.**

Witness [redacted] said he was working at the "[redacted]" on the date of the incident and was checking the parking lot for laundry carts. Witness [redacted] said he saw Witness [redacted] walking to his car and they began talking. Witness [redacted] said they entered Witness [redacted] car and were going to drink a beer when they saw a patrol car approaching.

IAB NOTE: According to Witness [redacted] they were in the car for approximately three minutes prior to exiting the vehicle.

Witness [redacted] said he exited the vehicle prior to drinking the beer and returned to the Laundromat to complete his work. Witness [redacted] said Witness [redacted] also exited the vehicle and went into the Laundromat to use the restroom. Witness [redacted] said Witness [redacted] asked him for a quarter to use the restroom.

IAB NOTE: The door to the restroom is coin operated.

Witness [redacted] said he gave Witness [redacted] a quarter and Witness [redacted] entered the restroom. Witness [redacted] said two police officers entered the Laundromat and asked him if he worked at the Laundromat to which he replied, "Yes." Witness [redacted] said the police officers asked him where his friend (Witness [redacted]) went. Witness [redacted] told the police officers Witness [redacted] was in the restroom.

Witness [redacted] said when Witness [redacted] exited the restroom he walked toward the east end of the Laundromat where the police officers contacted him. He said the police officers placed Witness [redacted] hands behind his back and escorted him out of the Laundromat. Witness [redacted] said he could not hear the conversation the deputies were having with Witness [redacted] prior to escorting him outside. Witness [redacted] said he looked out of the window and saw one of the deputies searching Witness [redacted] Witness [redacted] said he saw Witness [redacted] being placed into the backseat of the police car. Witness [redacted] did not see anything further.

SUBJECT INTERVIEW

SUBJECT JAMES NICOLES [redacted]

On March 12, 2013 Subject James Nicoles was interviewed by Internal Affairs Bureau Sergeant David Ladjevic and Sergeant Carlos Flores. The interview was conducted at Internal Affairs Bureau and was digitally audio recorded. Subject Nicoles was represented by Attorney Richard Shinee.

Subject Nicoles said on August 24, 2011 he was assigned to Carson Station and was beginning his [redacted] and his [redacted] was Deputy Brandon Love. Deputy Nicoles said he worked with Deputy Love, "a few nights."

IAB NOTE: Subject Love was recently assigned as Subject Nicoles' [redacted] On the night of the incident they worked together two days.

Subject Nicoles said they were patrolling the area of [redacted] Normandie Avenue Torrance, when they conducted a license plate check of a vehicle parked in the parking lot of the [redacted]' Subject Nicoles said when he conducted the license plate check via the Mobile Digital Terminal (MDT) he did not see any occupants in the vehicle. Subject Nicoles said the vehicle returned registered to [redacted] with an address of [redacted] **Refer to Exhibit A, page 11.** Subject Nicoles said Subject Love told him to run the address for warrants. Subject Nicoles said the address returned with several warrants. **Refer to Exhibit B,** for the Unit History Report.

Subject Nicoles said once they received the return and saw the warrants to the address they exited the radio car and entered the Laundromat. Subject Nicoles said when they entered the Laundromat they spoke with an employee, Witness [redacted].

> **IAB NOTE:** Due to the late hour, the Laundromat was the only business that was open and occupied.

Subject Nicoles asked Witness [redacted] who the vehicle in the parking lot belonged too. Subject Nicoles said Witness [redacted] pointed to the restroom, and after a few minutes a male exited the restroom. Subject Nicoles contacted the male, Witness [redacted], and asked him if his name was [redacted]. Witness [redacted] said, "Yes." Subject Nicoles said they escorted Witness [redacted] from the Laundromat to their radio car.

Subject Nicoles said when they arrived at the radio car he again asked Witness [redacted] if his name was [redacted]. Witness [redacted] again said, "Yes." Subject Nicoles said, while he was speaking with Witness [redacted] he asked him if he was on probation or parole. Witness [redacted] said, "No." Subject Nicoles asked Witness [redacted] if he had anything illegal on him. Witness [redacted] told him he did not have anything illegal on him. Subject Nicoles asked Witness [redacted] if it would be okay if he searched him. Witness [redacted] said, "Yes." Subject Nicoles conducted a search of Witness [redacted] and retrieved two bindles of Cocaine, one from his rear pant pocket and one from his front pant pocket.

> **IAB NOTE:** The conversation between Subject Nicoles and both witnesses was conducted in English.

Subject Nicoles said he arrested Witness [redacted] and placed him in the rear seat of the patrol car. Subject Nicoles said Subject Love asked him how he would write the report. Subject Nicoles told Subject Love he would write it the way that it occurred and began describing how he would write it. Subject Nicoles said Subject Love stopped him and said, "We are gonna have to do this differently."

> **IAB NOTE:** Subject Nicoles said the conversation regarding the report

writing took place in the field next to the patrol car.

Subject Nicoles said they left the location and drove to the station where he completed the booking of Witness [redacted]

Subject Nicoles said he did not recall exactly when he completed writing the report but he believed it was toward the end of their shift. Subject Nicoles said he recalled Subject Love sitting with him and dictating the report. Subject Nicoles said when the report was completed Subject Love read the report and approved it prior to him turning it in to the Watch Sergeant. Subject Nicoles said he turned the report in, and waited for it to be approved by the Watch Sergeant prior to leaving the station.

Subject Nicoles said he received a subpoena for the Preliminary Hearing which was set for January 10, 2012. Subject Nicoles said he did not recognize the case until he retrieved a copy of the arrest report. **Refer to Exhibit A page 8**, for the arrest report.

Subject Nicoles said during the Preliminary Hearing he was called as a witness and sworn in. Subject Nicoles said he was questioned regarding the arrest and the contents of his report, by the District Attorney and cross examined by Defense Attorney Jay Glaser. **REFER to EXHIBIT A page 15**, for the Court Transcripts of Subject Nicoles' testimony.

IAB NOTE: District Attorney Tapti Patel was supervising Certified Clerk Min-Kuk Song during the Preliminary Hearing.

Subject Nicoles said he testified to the contents of the report even though he knew the report was not accurate. Subject Nicoles said he understood that he had to testify to what was written on the report even if it wasn't true. Subject Nicoles said he did not notify anyone regarding the inaccurate statements because he did not know who to notify.

Subject Nicoles said he did not contest Subject Love's version of the arrest because he believed he would not be [redacted] Subject Nicoles said it was understood that if you go against your [redacted] you would not successfully complete the [redacted]

SUBJECT BRANDON LOVE

On April 22, 2013 Subject Brandon Love was interviewed by Internal Affairs Bureau Sergeant David Ladjevic and Sergeant Carlos Flores. The interview was conducted at Internal Affairs Bureau and was digitally audio recorded. Subject Love was represented by Attorney Bill Hadden.

Subject Love said on August 24, 2011 he was assigned to Carson Station as a [redacted] Subject Love said he was a newly assigned [redacted] and his first [redacted] was Subject Nicoles.

> **IAB NOTE:** Subject Love was a [redacted] Officer for three days on the date of the incident.

Subject Love said at approximately 2234 hours they were patrolling the area of [redacted] South Normandie Avenue, [redacted] Subject Love said they were driving in the parking lot and running license plates. Subject Love said they stopped behind a vehicle and saw two individuals inside of the vehicle talking. Subject Love said he asked Subject Nicoles to run the plate of the vehicle. Subject Love said while waiting for the return he saw the driver drinking from an unspecified beverage can.

> **IAB NOTE:** The vehicle registration returned to [redacted] with an address of [redacted]

Subject Love asked Subject Nicoles to run the address on the return. Subject Love said while waiting for the return Witness [redacted] and Witness [redacted] exited the vehicle and entered the Laundromat. Subject Love said there were several warrants to the address and they exited the patrol car in order to contact the individuals in the Laundromat.

Subject Love said they entered the Laundromat and contacted a person who he believed was an employee, Witness [redacted]. Subject Love said Subject Nicoles contacted Witness [redacted] however he did not recall what his actions were during the contact. Subject Love said they escorted Witness [redacted] out of the Laundromat and placed him near the front of their patrol vehicle. Subject Love said he remained next to Witness [redacted] while Subject Nicoles was inside the patrol vehicle using the Mobile Digital Terminal attempting to confirm Witness [redacted] identity.

Subject Love said Subject Nicoles exited the patrol vehicle and walked to Witness [redacted] vehicle and saw an open container of beer in the center console. Subject Love said once Subject Nicoles pointed out the open container of beer they arrested Witness [redacted] for drinking in public. Subject Love said Subject Nicoles conducted a search of Witness [redacted] incident to arrest and retrieved two bindles of cocaine from Witness [redacted] pant pockets.

Subject Love said after arresting Witness [redacted] he spoke with Subject Nicoles. He asked Subject Nicoles if he was "comfortable" writing the report and, and he asked Subject Nicoles to give him a brief synopsis of the arrest. Subject Love said Subject Nicoles gave him a synopsis however he did not recall his exact words. Subject Love

said he recalls giving him suggestions about what to write but did not dictate the report to him.

Subject Love said he did not recall when Subject Nicoles completed the report nor did he recall reviewing the report prior to Subject Nicoles turning the report in for approval. Subject Love said if he did review the report he did a "piss" poor job because the way it is written is not the way the incident occurred. Subject Love said there was no reason to change the report because they had plenty of probable cause to detain Witness [redacted]

Subject Love said he did not tell Subject Nicoles to write the report the way it is written nor did he dictate the report to Subject Nicoles.

REVIEW OF VIDEO RECORDING

The incident was recorded via a surveillance camera system inside of the [redacted] The video was reviewed by Internal Affairs Bureau Investigator Sergeant Ladjevic. The surveillance video was approximately six minutes in length.

On the video it appears that Witness [redacted] enters the location at 22:22:58 hours and Witness [redacted] enters at 22:23:20 hours. It appears Witness [redacted] gives Witness [redacted] an unknown object at 22:23:26 hours.

> **IAB NOTE:** Witness [redacted] obtained a quarter from Witness [redacted] to open the restroom door.

On the video it appears Witness [redacted] enters the restroom at 22:23:45 hours and exits the restroom at 22:24:17 hours. It appears Subject Nicoles and Subject Love entered the Laundromat at 22:24:07 hours. It appears Subject Nicoles and Subject Love contacted Witness [redacted] at 22:24:14 hours. On the video it appears Subject Nicoles contacted Witness [redacted] at 22:24:26 hours. On the video it appears Subject Nicoles and Subject Love escorted Witness [redacted] out of Laundromat 22:25:05 hours.



Leroy D. Baca, Sheriff

County of Los Angeles

Sheriff's Department Headquarters

4700 Ramona Boulevard
Monterey Park, California 91754-2169



October 15, 2013

Deputy James Nicoles, #[redacted]

Dear Deputy Nicoles:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business November 5, 2013.

An investigation under IAB File Number IV2308834, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of the Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/100.35, False Information in Records; and/or 3-01/005.10, Responsibility for Documentation; and/or 3-01/030.05, General Behavior, on or about August 24, 2011, you failed to perform to the standards established for your rank as a deputy sheriff when you failed to ensure that accurate statements and an accurate account of the arrest of [redacted] were properly recorded in an arrest report you authored, (Sheriff's Uniform Report Number 911-08976-1696-181), and/or caused false and/or inaccurate information to be documented in the arrest report (Sheriff's Uniform Report Number 911-08976-1696-181), and/or failed to report to a supervisor that false information was placed into an arrest report (Sheriff's Uniform Report Number 911-08976-1696-181), as evidenced by, but not limited to:

   a. admitting that the information you testified to in Los Angeles Superior Court, Department SC/O (case# TA119667), on January 10, 2012, was based on false

and inaccurate information that was documented in your arrest report (Sheriff's Uniform Report Number 911-08976-1696-181), and/or words to that effect; and/or,

b. admitting you knew that there was false information placed into your arrest report (Sheriff's Uniform Report Number 911-08976-1696-181), and/or words to that effect; and/or,

c. admitting that you failed to notify a supervisor regarding the false information placed into your arrest report (Sheriff's Uniform Report Number 911-08976-1696-181), and/or words to that effect; and/or,

d. being named as suspect in a 118 P.C., Perjury, and 118.1 PC False Statements in a Crime Report, investigation which was submitted to the Los Angeles County District Attorney's Office (Sheriff's Uniform Report Number 912-00037-2003-441); and/or,

e. stating that Deputy Brandon Love directed you to document in the arrest report (Sheriff's Uniform Report Number 911-08976-1696-181) that Gonzalez was contacted at his vehicle and ordered to exit his vehicle, and/or words to that effect; and/or,

f. stating that Deputy Brandon Love dictated the contents of the arrest report (Sheriff's Uniform Report Number 911-08976-1696-181) you authored, and/or words to that effect; and/or,

g. stating in your administrative interview that [redacted] was actually contacted in the laundromat, and/or words to that effect; and/or,

h. stating that it was Deputy Brandon Love who brought it to your attention that there was an open container of alcohol in [redacted] vehicle, and/or words to that effect; and/or,

i. stating that it was Deputy Brandon Love who searched [redacted] vehicle, and/or words to that effect; and/or,

j. stating that you discovered the cocaine in [redacted] pocket as a result of a consent search, and/or words to that effect.

You were on training as a field patrol deputy and under the supervision of your training officer, Deputy Brandon Love. As a ten-year veteran of the Department, your conduct did not conform to the Core Values of the Department, as you failed to exercise integrity, conduct your duties honorably, and/or apply wisdom while performing your duties as expected of law enforcement personnel. Your conduct brought undue embarrassment and/or damaged the reputation of the Department in that court officers and the District Attorney's office became aware of the false information in the arrest report (Sheriff's Uniform Report Number 912-00037-2003-441) and your false testimony. You brought discredit to yourself and/or the Department.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Michael Rothans, on November 5, 2013, at 1030 hours, in his office, which is located at 4700 Ramona Boulevard, Monterey Park, California 91754. If you are unable to appear at the scheduled time and wish to schedule some other time prior to November 5, 2013, for your oral response, please call Chief Rothans' secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Rothans' secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Rothans' office by no later than November 5, 2013.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Alicia E. Ault, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

AEA:PMP:cj

c: Advocacy Unit
Employee Relations Unit
Chief Michael J. Rothans, South Patrol Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2308834)

LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET

X FELONY MISDEMEANOR	AGENCY NAME LASD - INTERNAL CRIMINAL	DA CASE NO. 33887264	DATE 02/22/2013
	AGENCY FILE NO. (DR OR URN) 912-00037-2003-441	DA OFFICE CODE J.S.I.D. #12-0308R	VICTIM ASSISTANCE REFERRAL ☐ YES – NOTIFY VWAP ☐ NO

SUSP NO.	SUSPECT	CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)) NICOLES, JAMES RONALD	PC PC	118.1 118	08/24/2011 01/10/2012	B B
	DOB [redacted] · SEX (M/F) M · BOOKING NO. · VIP -- Yes X No				
	___ Gang Member Name of Gang	___ Victim Gang Member Name of Gang:			
	Victim Name:	Victim DOB:			
2	NAME (LAST, FIRST MIDDLE))				
	DOB · SEX (M/F) · BOOKING NO. · VIP -- Yes -- No				
	Gang Member Name of Gang	___ Victim Gang Member Name of Gang:			
	Victim Name:	Victim DOB:			
3	NAME (LAST, FIRST MIDDLE))				
	DOB · SEX (M/F) · BOOKING NO. · VIP -- Yes -- No				
	Gang Member Name of Gang	___ Victim Gang Member Name of Gang:			
	Victim Name:	Victim DOB:			

Comments

SEE ATTACHED.

COMPLAINT DEPUTY (print)	COMPLAINT DEPUTY (SIGNATURE)	STATE BAR NO.	REVIEWING DEPUTY (SIGNATURE)
GEOFFREY RENDON/ap	[signature]	198963	[signature]

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SERGEANT AMYLYNN HANSEN FILING OFFICER (SIGNATURE): Mailed 3/1/13 SERIAL #. [redacted]

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715)			DISTRICT ATTORNEY'S REASON CODES
A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral M. Probation Violation filed in lieu of N. Referred to City Attorney for Misdemeanor Consideration

LAST NAME: NICOLES FIRST NAME: JAMES DA CASE NUMBER: 33887264

7h

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations that Los Angeles County Sheriff's Department (LASD) Deputy James Nicoles, Serial [redacted] committed the crimes of perjury and filing a false police report in violation of Penal Code sections 118 and 118.1. For the reasons set forth below, this office declines to initiate criminal proceedings.

The following analysis is based on reports prepared by the LASD and submitted to this office by Internal Criminal Investigations Bureau (ICIB) Sergeant Amylynn Hansen, the District Attorney's file in case number TA119667 and a video recording from a laundromat security camera.

SUMMARY OF FACTS

On August 24, 2011, LASD Deputies James Nicoles and Brandon Love were on patrol in a marked vehicle. Deputy Nicoles was on [redacted] status and Deputy Love was his [redacted] At approximately 10:34 p.m., Nicoles and Love arrested [redacted] for possession of cocaine. Nicoles wrote an arrest report, signed a probable cause declaration under penalty of perjury and later testified at a preliminary hearing.

According to the arrest report, the deputies were driving through a parking lot on South Normandie Avenue in the City of Torrance. They were randomly checking license plates through their vehicle's mobile digital terminal (MDT). [redacted] license plate returned registered to [redacted] at an address in the City of Wilmington. A warrant search for the Wilmington address showed multiple outstanding warrants for a male Hispanic.[1]

In the arrest report, Nicoles wrote:

> "We observed a Hispanic male in the driver's seat of the vehicle. Upon contacting the driver to ascertain if he had a warrant, I saw he was drinking from a tall can of 'Bud Light' beer in public (violation of 12.18.010 LACC). *We had* [redacted] *exit the driver's side of the vehicle* and arrested [redacted] for the indicated charges." (Italics added.)

Incident to the arrest, Nicoles searched [redacted] and recovered a baggie of cocaine from his pants pocket. [redacted] told Nicoles that he paid $20 for the cocaine. Nicoles recovered more cocaine wrapped inside a $1 bill from the same pocket. Nicoles made no mention of [redacted] or the deputies entering the nearby laundromat.

In the probable cause declaration, Nicoles wrote:

[1] The Unit History Report for the deputies' patrol car confirmed Deputy Nicoles' statements in the report that, shortly before contacting [redacted] he ran [redacted] license plate and then the registration address, and found the warrants for a male Hispanic at the address.

7c

> "During a suspicion [sic] person in a vehicle stop, [redacted] was drinking in public (violation of 13.18.010 LACC). [redacted] was arrested regarding the above violation. During a search incident to arrest, I recovered a baggie containing a white powdery substance resembling cocaine. [redacted] was additionally charged with 11350 H.S."

Again, Nicoles made no mention of any events occurring in the laundromat.

On August 26, 2011, a felony complaint was filed against [redacted] in case number TA119667, charging one count of possession of a controlled substance.

On January 10, 2012, at [redacted] preliminary hearing, Nicoles testified consistently with his arrest report.[2] On direct examination, Nicoles was asked, "Did you make contact with the defendant that day?" Nicoles responded, "I did." He was not asked where the contact took place.

On cross-examination, Nicoles testified that he prepared the police report, that he included all of the critical material facts underlying the arrest and that it was true and accurate. The following series of questions and answers ensued:

Q:	Where was he (referring to [redacted] detained?
A:	In the parking lot, sir.
Q:	Okay, next to his car or --
A:	Outside of his vehicle.
Q:	Did you ask – were you right adjacent to his car, or can you tell us how that happened.
A:	Yes. Originally, we were behind the vehicle. That's when I ran the license plate. And then we exited our vehicle and approached his.
Q:	Okay. So he was seated in the car when you came up?
A:	Yes.
Q:	And you detained him while he was in the car, or you asked him to step out of the car?
A:	To the best of my recollection, yes, sir.
Q:	Which is it?
A:	Yes, sir, that he was in the car and we had him step out.
Q:	Okay. And at that time, you – you searched him at that time?
A:	I searched him – yes. I had him walk over to my vehicle.
Q:	Okay. And your vehicle, I take it, was also in the parking lot?
A:	Yes, it was.
Q:	And that's when you searched him?
A:	Yes.
Q:	And – so his total movements were you saw him – or involvement with you was

[2] A certified law clerk, under the supervision of Deputy District Attorney Tapti Patel, conducted the hearing.

7d

	exiting his car and then you detaining him and then walking over to your car and searching him; Is that correct?
A:	Yes, sir.
Q:	So just correct me if I'm wrong. From the time that you asked him to exit the driver's side of his vehicle until the time you arrested him, he was always in your custody, correct? I don't mean custody in the sense of under arrest. I mean he was always within your arm's reach or within your control. Is that a fair statement?
A:	That's a fair statement, sir.

The hearing concluded and [redacted] was held to answer.

On February 8, 2012, [redacted] attorney, Jay Glazer, wrote to Head Deputy Peter Cagney, alleging misconduct by Nicoles. Included with the letter was a USB drive containing video from a laundromat security camera at the location where [redacted] was arrested. Glazer noted that the video showed that the detention occurred inside the laundromat, rather than in the parking lot as Nicoles testified and wrote in the arrest report.

The video shows [redacted] inside the laundromat, obtaining a key or token for the restroom. At approximately 10:23 p.m., [redacted] entered the restroom. Less than 30 seconds later, Deputies Nicoles and Love entered the laundromat. Approximately 10 seconds later, [redacted] exited the restroom and was contacted by Nicoles. Nicoles spoke to [redacted] and immediately handcuffed him.

Following receipt of the materials from Glazer, Compton Branch deputy district attorneys made numerous attempts to speak to Nicoles and Love by contacting the command staff at Carson Sheriff's Station and the Compton Courthouse Sheriff's Court Liaison. The deputies never responded. On March 9, 2012, the case against [redacted] was dismissed.

Statement of [redacted]

On April 10, 2012, [redacted] was interviewed by ICIB Investigators at his attorney's office. [redacted] said that on the evening of his arrest, he had finished work and bought beer at Rite Aid. He sat in his vehicle in the parking lot, talked on his cell phone and drank some beer. He saw a friend, [redacted] working inside the laundromat and invited him to join him for a beer. [redacted] and [redacted] sat inside the vehicle and drank beer for a short time. [redacted] exited the vehicle and returned to the laundromat. Shortly thereafter, [redacted] needed to use the restroom and exited his vehicle. [redacted] saw a police car in the parking lot. [redacted] removed a bottle of water from his trunk and walked into the laundromat. [redacted] got a quarter from [redacted] and entered the restroom.

[redacted] exited the restroom and saw the deputies inside the laundromat. They called him over and asked for his name and identification. As [redacted] removed his wallet, Deputy Nicoles took his hands, preventing [redacted] from moving. [redacted] was

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escorted out of the laundromat and ordered to put his hands on the patrol car's hood. The deputies searched [redacted] placed him under arrest and seated him in the patrol car. The deputies removed unopened beer cans from [redacted] car.

[redacted] denied that the deputies took him out of his vehicle, but acknowledged that it was possible that the deputies had seen him drinking beer in his vehicle before detaining him in the laundromat.

[redacted] was not asked, per his attorney's request, whether he possessed the cocaine that the deputies allegedly recovered. He did not claim that the deputies planted the drugs on him.

Statement of [redacted]

On June 5, 2012, ICIB Investigators interviewed [redacted] At the time of the incident, [redacted] saw [redacted] walking to his car in the parking lot outside of the laundromat. The two men entered [redacted] car to drink beer. Shortly thereafter, Hernandez saw a patrol car approaching. He claimed that neither he nor [redacted] drank any beer due to the presence of the patrol vehicle. The two men stayed in the car for a short time and then exited and entered the laundromat. [redacted] asked [redacted] for a quarter and went to the restroom.

Two sheriff's deputies entered the laundromat and asked [redacted] if he worked there. [redacted] said he did. When the deputies asked where [redacted] went, [redacted] told them that he was in the restroom. [redacted] exited the restroom and was detained by the deputies. [redacted] was too far away to hear any conversation between the deputies and [redacted] [redacted] saw the deputies searching [redacted] at the patrol car.

Nicoles and Love refused an ICIB investigator's request for voluntary statements regarding the arrest of [redacted]

LEGAL ANALYSIS

Filing a False Police Report

"Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false . . . is guilty of filing a false report." Penal Code section 118.1.

The evidence establishes that the deputies first contacted [redacted] inside the laundromat. In contrast, Deputy Nicoles' arrest report reflects that he first contacted [redacted] while [redacted] was still seated in his driver's seat, saw he was drinking and had him exit the car. Considering that Nicoles wrote the arrest report immediately after the events he was

documenting, it is unlikely that the false statements in the report were due to his failure to accurately recollect the events. Therefore, there is persuasive evidence that Nicoles knowingly wrote false statements in the report.

However, knowingly providing false information in a police report does not constitute the crime of filing a false report unless that information is deemed to be "material." Accordingly, the issue becomes whether the false statements in Nicoles' report (that they contacted [redacted] in the vehicle and had him exit) were "material" within the meaning of Penal Code section 118.1.

There are no reported cases interpreting the meaning of the term "material" as used in Section 118.1. However, "material" is defined in closely related Penal Code section 118 (perjury). In providing the elements of perjury, California Criminal Jury Instructions (CALCRIM) No. 2640 defines information as being material "if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings."

The purpose of Nicoles' report was to document (1) the reason for [redacted] detention and (2) the recovery of the cocaine from his pocket. Nicoles' misrepresentation as to where [redacted] was first contacted had no bearing on whether the deputies had legal justification to detain [redacted] or whether he had cocaine in his pocket.

Before contacting [redacted] in the laundromat, the MDT records show that the deputies had already run his license plate and determined that a person associated with the car and generally matching [redacted] description had outstanding arrest warrants. Both [redacted] and [redacted] admitted to being in the car to drink beer and [redacted] said he was in fact drinking. [redacted] acknowledged that the deputies were in a position to see him drinking before he entered the laundromat. Therefore, upon contacting [redacted] in the laundromat, the deputies had ample justification to detain him for a warrant investigation and to arrest him for drinking in public. Similarly, the misrepresentation as to where [redacted] was contacted had no affect on the crux of the report - that the deputies recovered cocaine from his pocket.

Under these circumstances, the People would be unable to prove beyond a reasonable doubt that it was "probable" that the information as to where [redacted] was first contacted would have influenced "the outcome of the proceedings." As a result, there is insufficient evidence to establish that the misrepresentations were "material" within the meaning of Penal Code section 118.1.

Perjury

To prove the crime of Perjury, California Criminal Jury Instructions (CALCRIM) No. 2640 requires the People to establish that:

1. The defendant took an oath to testify truthfully before a competent tribunal;

2. When the defendant testified, he or she willfully stated that the information was true even though he or she knew it was false;
3. The information was material;
4. The defendant knew he or she was making the statement under penalty of perjury; and
5. When the defendant made the false statement, he or she intended to testify falsely while under penalty of perjury.

Information is material "if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings." CALCRIM 2640.

Consistently with the misstatement in his arrest report, Nicoles testified that [redacted] "was in the car and we had him step out." Based on the same analysis regarding the crime of filing a false police report, we conclude that it cannot be proven beyond a reasonable doubt that this misrepresentation was material within the meaning of Penal Code section 118.

Based on the foregoing evaluation, there is insufficient evidence to prove the crimes of perjury or filing a false police report beyond a reasonable doubt. Therefore, we are closing our file and will take no further action on this matter.